

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 862 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI C ZAVERI

Versus

DISTRICT HEALTH OFFICER

Appearance:

MR BN VAISHNAV FOR MR SP HASURKAR for Petitioner
MR VB GHARANIA, AGP for Respondent Nos.1, 2 & 3
MR HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/1999

ORAL JUDGEMENT

1. Heard learned counsel for the parties.
2. The petitioner joined the service with the then Bombay State as Medical Officer on 20.3.1953. He tendered resignation to the respondent No.2 Director of Health, Government of Gujarat, Ahmedabad. The District Health Officer, District Panchayat, Surat vide its letter

dated 24.6.1977 informed the petitioner that without formality of the notice pay etc. is being complied with his resignation cannot be accepted and the petitioner cannot be relieved without prior sanction of the Director of the Medical Health Service. The petitioner vide its letter dated 8.8.1977 requested the District Health Officer, District Panchayat, Surat that the period from 1.9.1976 to 30.9.1976 be treated as notice period and appropriate order may be passed. The District Health Officer, District Panchayat Surat vide its letter dated 9.10.1978 informed the petitioner that on his resignation no action can be taken unless dues of Rs.2000/- towards GP Fund is cleared. The petitioner by his application dated 16.11.1978 addressed to the District Health Officer, District Panchayat Surat requested to treat his resignation as withdrawn. Second request has been made for the benefits of voluntary retirement scheme which has been brought into force w.e.f. 16.2.1979. Voluntary retirement scheme has been brought into force by the State Government under its resolution No.NVN-1078/396/P dated 3.2.1978.

3. Here, first somersault was taken by the District Health Officer of District Panchayat Surat which is clearly reflected from his letter dated 2.7.1979 addressed to the petitioner. The said officer informed to the petitioner that as he has earlier asked for the resignation, his request for voluntary retirement cannot be accepted and the petitioner was asked to deposit the dues. The petitioner sent various representations and reminders from time to time till 1991 in this matter. In the interregnum he attained the age of superannuation on 5.9.1986. On 1.3.1992 the Government has directed the District Health Officer to send necessary papers of the petitioner re request of voluntary retirement to the Commissioner of Health Services. The District Health Officer of District Panchayat Surat vide its letter dated 30.6.1992 asked the petitioner to see him personally. Accordingly, the petitioner has appeared before him.

4. Second somersault has been taken very conveniently by the District Health Officer of District Panchayat Surat which reflects from his letter dated 3.7.1992. Under this letter he reported to the Commissioner of Health Services that in view of the fact that resignation is accepted on 2.7.1979 he seeks advise from the Government. The petitioner was directed vide letter dated 22.12.1992 of the District Health Officer of District Panchayat Surat to see him within two days. The Government has replied on 6.10.1994 that the petitioner is Class-III employee, the District Panchayat Surat is

the competent authority to take decision on his application for voluntary retirement.

5. The petitioner at this junction filed Special Civil Application No.8600/95 before this court and prayed for the directions to the respondents for expeditiously sanction of his retirement benefits. In the affidavit to that petition filed by the District Panchayat Surat defence has been taken that the petitioner has not filed any application for voluntary retirement to the District Development Officer. No decision taken on the application and the retirement benefits are not given.

6. From the judgment of this court given in Special Civil Application which was decided on 6.2.1996 I find that the respondent No.4 in affidavit in reply stated that there was no specific application for voluntary retirement made by the petitioner to the competent authority. It is further stated that even though resignation was not accepted and voluntary retirement was not sanctioned the petitioner has not turned up to the service. The petitioner has not complied with the relevant rules and regulations and procedure as laid down for voluntary retirement. This court has given directions to the respondent No.4 to decide the case of retirement benefits of the petitioner as expeditiously as possible preferably within 4 months from the date of receipt of the writ. This matter was decided by the District Development Officer, Surat under its order dated 10.6.1996. The District Development Officer, Surat has opined that as per the scheme of voluntary retirement three months notice has not been given by the petitioner and the petitioner has also not resumed the duty after August 1996, therefore, his resignation deemed to have been effective as per Rule 33-A of the Bombay Civil Services Rules, 1959.

7. It is the third somersault which has been taken where the respondent No.4 has come up with the case of deemed acceptance of the resignation of the petitioner in the reply to the Special Civil Application.

8. Now the contention raised by the respondent No.4 is that the petitioner has never joined the work after 30.9.1976. Second defence has been taken that the petitioner cannot get the benefits of voluntary retirement after two years of his resignation that is w.e.f. 30.9.1976. So there are self contradictory defences taken by the respondent No.4 in the earlier petition and in this petition. I do not find any justification in these defences of the respondent No.4.

9. Under the order dated 10.6.1996 despite of the fact that the court has given the directions to the respondent No.4 to expeditiously decide voluntary retirement matter of the petitioner, the resignation of the petitioner was accepted w.e.f. 30.9.1976. The plea of the deemed acceptance of the resignation of the petitioner is not available to the respondent because positive order has been passed of acceptance of the resignation from 30.9.1976. This order has been passed on 10.6.1996, that is different matter. But from the facts of the case there is no dispute that resignation of the petitioner was not accepted till 10.6.1996. The petitioner has not submitted a clear and specific application for voluntary retirement. Before acceptance of the resignation voluntary retirement scheme has came into force. Thereafter, the petitioner has made an application for treating his resignation as withdrawn and to give him benefits of the resolution dated 3.2.1978 w.e.f. 16.2.1979. On this application of the petitioner no order has been passed. From the correspondence of the District Health Officer of District Panchayat Surat referred to earlier the application of the petitioner for resignation from the service was not accepted, nor it could have been accepted for the reasons given therein.

10. The petitioner had also made clear to the respondents to treat the period from 1.9.1976 to 30.9.1976 as the notice period, but as the GPF dues are to be cleared, this request has not been accepted. It is true that the petitioner has not returned to his duty after 30.9.1976, but looking to the facts of this case and particularly the fact that the petitioner on the date on which he submitted the application for his voluntary retirement, having to its credit more than 23 years of services and vide resolution dated 3.2.1978 voluntary retirement scheme has been introduced, it cannot be taken to be the case of deemed acceptance of the resignation and more so when now admittedly that resignation has been accepted by the respondent No.4 vide order dated 10.6.1996 from back date. Where the respondent No.4 has admittedly accepted the resignation of the petitioner now how it is open, available and permissible to it to raise a plea and to take a defence that it is the case of deemed acceptance of the resignation. The provisions in B.C.S.Rules, 1959 of deemed acceptance of resignation cannot be permitted to the respondents to put in service to it in this case. The respondent No.4 cannot be permitted to take benefit of its own inaction or omission, that too at the cost of suffering of officer of the department who rendered 23 years valuable services.

11. Technically the notice has to be given for voluntary retirement by the petitioner, but the respondents themselves are responsible for all these creations. In case they would have acted fairly and reasonably the petitioner would not have been subjected to these two litigations and suffering for all these years to wait for retirement benefits.

12. In view of these facts, it is the case where the petitioner cannot be denied benefits of voluntary retirement scheme as brought in force vide Government Resolution dated 3.2.1978.

13. Now the question does not arise for consideration as to what relief is to be granted to the petitioner. It is at the most can be said to be the case where the petitioner remained absent from duty from 1.10.1976 to the date 16.11.1978, but the petitioner has not taken to be absent nor any disciplinary action has been taken against him by the respondents. So firstly the petitioner cannot be given any monetary benefits for this his absence period. However in the facts of this case the period aforesaid deserves to be counted towards qualifying service for benefits of pension etc. The petitioner has submitted an application on 16.11.78 for voluntary retirement, though in substance may not be in form. He has to give three months notice. But voluntary retirement could have been accepted either by waiving the notice period and asking the petitioner to pay three months salary in lieu of the notice.

14. It is really surprising that in the Government or District Panchayat, officers are not fairly and reasonably acting. Their actions are very very arbitrarily and perverse. They are too technical in their approach and which ultimately in many cases results in heavy monetary loss to the Government.

15. In the result, this Special Civil Application succeeds in part. The petitioner shall be taken to have been voluntary retired from the service w.e.f. 16.11.1978. Qualifying service of the petitioner for determination of the pension and all other retirement benefits are to be taken from 20.3.1953 to 16.11.1978, but he will not get any actual benefit for the period from 1.10.1976 to 16.11.1978. Respondents are directed to sanction the pension of the petitioner accordingly. Determination of the pension to be paid to him, the amount of gratuity and computation of pension as well as all other retirement benefits to be made within a period

of three months from the date of receipt of the writ of this order. The arrears of pension, the amount of gratuity, computation of pension and other retirement benefits are to be paid to the petitioner within one month next. Out of these amounts the respondent No.4 is at liberty to deduct three months notice salary i.e. notice pay for voluntary retirement from the amount to be paid to the petitioner. The amount of salary which has to be deducted from the amount to be paid to the petitioner on the basis of the notional pay which has been arrived at on 16.11.1978. Rule is made absolute in the aforesaid terms with no order as to costs.

(S.K.Keshote,J.)
(pathan)